

Donna Hayes (“Mother”) appeals the trial court’s order terminating her parental rights as to her minor child, C.A.H. She raises one issue, which we restate as whether sufficient evidence was presented to support the trial court’s decision to terminate her parental rights.

We affirm.

FACTS AND PROCEDURAL HISTORY

On August 28, 1997, C.A.H. was born to Mother and Rodreguis Demarco Hayes (“Father”).¹ In September 2003, C.A.H. was adjudicated a Child in Need of Services (“CHINS”). This was because the Warrick County Office of Family and Children Services (“OFC”) had received a call from Vanderburgh County, where C.A.H. had been staying with Father. Father’s girlfriend had taken C.A.H. to Vanderburgh County’s Division of Child Services because Father had abandoned C.A.H. in her care, and she was no longer able to take care of the child. Because Mother was the custodial parent and lived in Warrick County, the OFC took custody of C.A.H., but was not able to return him to Mother because she was not deemed to be a suitable parent. Mother’s other three children had been removed from her care, and at that time, the OFC did not have any indication that the circumstances that had led to their removal had been changed. The OFC therefore retained custody of C.A.H. and filed a CHINS petition.

When the OFC took custody of C.A.H., it offered services to Mother that would help reach the goal of reunification with C.A.H. The goals and case plans that the OFC presented to Mother were to attend home-based parenting classes, complete a bonding assessment,

¹ Father was originally a party to the termination proceedings, and he voluntarily consented to the termination of his parental rights as to C.A.H. on December 13, 2005.

complete a psychological evaluation, attend and complete a parenting skills assessment, participate in family counseling, maintain suitable employment, maintain adequate housing, participate in recommended services, maintain consistent contact with the OFC case manager and report any address changes, participate in visitations, and cooperate with the OFC and its representatives. Mother refused to participate in any services offered by the OFC. *Termination Hr'g Tr.* at 44. She told the OFC case manager, Brenda Sue Augustine, that she did not see any point in the classes or services and did not believe that they would do any good. *Id.*

After the CHINS petition was filed, Mother did not maintain a stable home to which C.A.H. could be returned. She briefly stayed at the same residence for four or five months, but other than that, she moved every few months. She lived in approximately eight different locations, and at one time, the OFC did not know where she was for eight months. During the time that C.A.H. was removed, Mother had at least six different places of employment, and there was a six-month period where the OFC lost track of her and had no record of her employment. The only one of the items from the case plan that Mother accomplished was that she began to keep in contact with Augustine. Mother only had four visitations with C.A.H. in the two and a half years that he was in the custody of the OFC. Several additional visitations were also set up, but Mother did not maintain these appointments. Mother never met with the Guardian Ad Litem, Cynthia Phillips, although several attempts were made to set up appointments. Mother cancelled one appointment, never showed up for another, and then failed to maintain contact with Phillips thereafter.

The OFC filed a petition to terminate Mother's parental rights as to C.A.H. on April 8, 2005. A hearing was held on the petition on December 13, 2005. At this hearing, Mother testified that although she was still living with a friend, she was planning on signing a lease for a new apartment in the near future. *Id.* at 61. She also stated that she was currently employed and had an opportunity for a new job, which had a salary increase. *Id.* at 60-61, 62. At the time of the hearing, Mother had regained custody of her other three children. She claimed that the only reason she had not maintained visitations with C.A.H. was because she did not have transportation. *Id.* 63-64. Her driver's license had been suspended, but she expected to be able to get it back soon. *Id.* at 65-66. At the hearing, Augustine, Phillips, and C.A.H.'s counselor all testified that it would be in his best interest if Mother's parental rights were terminated. *Id.* at 15, 33, 52-53. On January 27, 2006, the trial court entered an order terminating Mother's parental rights as to C.A.H. Mother now appeals.

DISCUSSION AND DECISION

The Fourteenth Amendment of the United States Constitution protects the rights of parents to establish a home and raise their children. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). Although parental interests may be constitutionally protected, they are not absolute and must be subordinated to the child's interest when determining the proper disposition of a petition to terminate parental rights. *Id.* "[A] trial court does not need to wait until a child is irreversibly influenced by a deficient lifestyle such that his or her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship." *Castro v. Ind. Office of Family & Children*, 842 N.E.2d 367, 372 (Ind. Ct. App. 2006), *trans. denied*. When the evidence shows that the

emotional and physical development of a child is threatened, termination of parental rights is appropriate. *Id.*

When reviewing the termination of parental rights, we do not reweigh the evidence or judge the credibility of the witnesses. *Bester*, 839 N.E.2d at 147. We consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. *Id.* We will not set aside a trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. *Castro*, 842 N.E.2d at 372.

Mother argues that the OFC failed to present sufficient evidence to support the termination of her parental rights as to C.A.H. In order to effect the termination of a parent-child relationship, the OFC must establish the following elements:

(A) that one (1) of the following exists:

- (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
- (ii) a court has entered a finding . . . that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
- (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(B) there is a reasonable probability that:

- (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
- (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

IC 31-35-2-4(b)(2). These allegations must be proven by clear and convincing evidence. IC 31-37-14-2; *In re A.I.*, 825 N.E.2d 798, 806 (Ind. Ct. App. 2005), *trans. denied*. Because subsection (b)(2)(B) is written in the disjunctive, however, the trial court need only find one of the two elements by clear and convincing evidence. *Castro*, 842 N.E.2d at 373.

Mother specifically contends that the OFC failed to prove by clear and convincing evidence that the conditions that resulted in C.A.H.'s removal or the reasons for placement outside of the home will not be remedied.² She claims that the trial court erred in its determination because she presented evidence that, at the time of the hearing, the conditions that had caused the OFC to remove C.A.H. had been ameliorated because she had obtained and maintained steady employment and was capable of maintaining a suitable household for herself and her three other children.

“In determining whether the conditions that led to the [child’s] removal are likely to be remedied, the trial court must assess the parent’s ability to care for the [child] as of the date of the termination proceeding and take into account any evidence of changed conditions.” *Rowlett v. Vanderburgh County Office of Family & Children*, 841 N.E.2d 615, 620 (Ind. Ct. App. 2006), *trans. denied*. The trial court should also take into consideration the parent’s habitual patterns of conduct to determine whether there is a substantial

² Mother does not challenge that the child had been removed from her care for the requisite amounts of time, that termination is in the best interests of the child, or that there is a satisfactory plan for the care and treatment of the child.

probability of future neglect or deprivation of the child. *Id.* A trial court may properly consider evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate employment and housing. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 199 (Ind. Ct. App. 2003). Additionally, the services offered by the OFC to the parent and the parent's response to those services can reasonably be considered. *Id.* "A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, will support a finding that there exists no reasonable probability that the conditions will change." *In re A.H.*, 832 N.E.2d 563, 570 (Ind. Ct. App. 2005).

It has been concluded that "removal" of the child for purposes of the termination statute is detailed in the dispositional decree. *In re A.I.*, 825 N.E.2d at 806 (citing *In re C.D.*, 614 N.E.2d 591, 593 (Ind. Ct. App. 1993), *trans. denied*). The termination statute provides that the OFC must establish a reasonable probability that "the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied." IC 31-35-2-4(b)(2)(B)(ii). This language clarifies that it is not only the initial basis for removal of the child that may be considered by the trial court, but also those reasons resulting in the continued placement outside of the parents' home. *In re A.I.*, 825 N.E.2d at 806. Therefore, the trial court could properly consider whether Mother was likely to remedy any of the conditions listed in the dispositional decree in order to determine if this requirement of the statute was met.

Here, evidence was presented that at the time that C.A.H. was taken into custody by

the OFC, Father had abandoned the child with a girlfriend, and Mother's home was not deemed to be suitable because the conditions that resulted in the removal of her other children had not yet been resolved. When the OFC took custody of C.A.H. and filed a CHINS petition, Augustine offered services to Mother that would aid in the goal of reunification with the child. At that time, Mother refused all of the services offered. She told Augustine that there was no way she wanted to do any services because she did not think that they would do any good and that there was no point in doing them. *Termination Hr'g Tr.* at 44, 49. In October 2005, Mother was again offered an opportunity to participate in a home-based parenting class, but the service provider was never able to locate Mother at the addresses she provided the OFC. Consequently, at the time of the termination hearing, Mother had not participated in any services during the CHINS and termination proceedings. Additionally, the OFC set up counseling to provide C.A.H. with services and to supervise visitations between Mother and the child. From October 17, 2004 until December 13, 2005, Mother only attended four visitations with C.A.H. Several other appointments were set up, but Mother did not show up for them. Because Mother did not have transportation to get to the visitations, Augustine offered to provide transportation to enable Mother to have visitations with C.A.H., but Mother did not take advantage of this opportunity. Phillips, the Guardian Ad Litem, testified that in the over two years that she was involved with the case, she had never spoken with Mother despite arranging appointments that Mother did not attend. *Id.* at 13. Phillips was not able to get in contact with Mother through mail because she did not have a valid address for Mother. During the CHINS and termination proceedings, Mother did not maintain suitable housing for C.A.H. She lived in at least eight different

residences in the two plus years, and at one time, the OFC did not know where she was for eight months. Mother also had at least six different places of employment, and there was a six-month period where the OFC lost track of her and had no record of employment.

Mother contends that, at the time of the termination hearing, she was maintaining steady employment, was planning on moving to a suitable apartment, and was taking care of her other three children and that these facts demonstrate that the original reasons for taking C.A.H. into custody have been remedied. Mother's arguments essentially ask this court to reweigh the evidence presented at the hearing, which we will not do on review. *Bester*, 839 N.E.2d at 147. We therefore conclude that the trial court's finding that the conditions that resulted in C.A.H.'s removal or the reasons for placement outside of the home would not be remedied was supported by sufficient evidence.

Affirmed.

RILEY, J., and FRIEDLANDER, J., concur.